

AMENDED IN SENATE MAY 23, 1997
AMENDED IN ASSEMBLY MARCH 20, 1997

CALIFORNIA LEGISLATURE—1997–98 REGULAR SESSION

ASSEMBLY BILL

No. 216

Introduced by Assembly Member Wayne

February 4, 1997

An act to amend Section 1466 of the Penal Code, relating to criminal procedure.

LEGISLATIVE COUNSEL'S DIGEST

AB 216, as amended, Wayne. Criminal procedure: appeal.

Existing law specifies the cases that the people may appeal from a judgment or order of an inferior court, in an infraction or misdemeanor case, to the superior court of the county in which the inferior court is located.

This bill would add to these cases the imposition of an unlawful sentence, whether or not the court suspends the execution of sentence. The bill would define "unlawful sentence" for these purposes. *The bill also would provide that the defendant shall have the right to counsel in the people's appeal of an unlawful sentence under the same circumstances that he or she would have under existing law for a similar appeal from a felony conviction. By providing the right to counsel in these appeals, the bill would impose a state-mandated local program.*

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated

by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

Vote: majority. Appropriation: no. Fiscal committee: ~~no~~—yes. State-mandated local program: ~~no~~ yes.

The people of the State of California do enact as follows:

1 SECTION 1. Section 1466 of the Penal Code is
2 amended to read:

3 1466. (a) An appeal may be taken from a judgment
4 or order of an inferior court, in an infraction or
5 misdemeanor case, to the superior court of the county in
6 which the inferior court is located, in the following cases:

7 (1) By the people:

8 (A) From an order recusing the district attorney or
9 city attorney pursuant to Section 1424.

10 (B) From an order or judgment dismissing or
11 otherwise terminating the action before the defendant
12 has been placed in jeopardy or where the defendant has
13 waived jeopardy.

14 (C) From a judgment for the defendant upon the
15 sustaining of a demurrer.

16 (D) From an order granting a new trial.

17 (E) From an order arresting judgment.

18 (F) From any order made after judgment affecting
19 the substantial rights of the people.

20 (G) From the imposition of an unlawful sentence,
21 whether or not the court suspends the execution of
22 sentence. As used in this subparagraph, ~~“unlawful~~
23 ~~sentence”~~ “unlawful sentence” means the imposition of a
24 sentence not authorized by law or the imposition of a
25 sentence based upon an unlawful order of the court that
26 strikes or otherwise modifies the effect of an
27 enhancement or prior conviction. *A defendant shall have*
28 *the right to counsel in the people’s appeal of an unlawful*
29 *sentence under the same circumstances that he or she*
30 *would have a right to counsel under paragraph (1) of*
31 *subdivision (a) of Section 1238.*

1 (H) Nothing in this section shall be construed to
2 authorize an appeal from an order granting probation.
3 Instead, the people may seek appellate review of any
4 grant of probation, whether or not the court imposes
5 sentence, by means of a petition for a writ of mandate or
6 prohibition that is filed within 60 days after probation is
7 granted. The review of any grant of probation shall
8 include review of any order underlying the grant of
9 probation.

10 (2) By the defendant:

11 (A) From a final judgment of conviction. A sentence,
12 an order granting probation, a conviction in a case in
13 which before final judgment the defendant is committed
14 for insanity or is given an indeterminate commitment as
15 a mentally disordered sex offender, or the conviction of
16 a defendant committed for controlled substance
17 addiction shall be deemed to be a final judgment within
18 the meaning of this section. Upon appeal from a final
19 judgment or an order granting probation the court may
20 review any order denying a motion for a new trial.

21 (B) From any order made after judgment affecting his
22 or her substantial rights.

23 (b) An appeal from the judgment or appealable order
24 of an inferior court in a felony case is to the court of appeal
25 for the district in which the court is located.

26 SEC. 2. No reimbursement is required by this act
27 pursuant to Section 6 of Article XIII B of the California
28 Constitution because counties will receive funding under
29 the Brown-Presley Trial Court Funding Act (Chapter 13
30 commencing with Section 77000) of Title 8 of the
31 Government Code) in lieu of that requirement.

32 Notwithstanding Section 17580 or the Government
33 Code, unless otherwise specified, the provisions of this act
34 shall become operative on the same date that the act
35 takes effect pursuant to the California Constitution.